

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

DONNA WHITE INDIVIDUALLY AND §
AS REPRESENTATIVE OF THE ESTATE §
OF ROY WHITE, §
§
Plaintiff, §
§ CIVIL ACTION No. 5:19-CV-01291-XR
v. §
§
UNITED STATES OF AMERICA, §
§
Defendants. §
§
§
§
§
§

**DEFENDANT UNITED STATES' MOTION FOR LEAVE TO FILE OUT OF TIME
ITS ANSWER OR OTHERWISE PLEAD TO PLAINTIFF'S ORIGINAL COMPLAINT**

COMES NOW Defendant, the United States of America, by and through the United States Attorney for the Western District of Texas, and in support thereof would state as follows:

1. Plaintiff filed this action on October 30, 2019 (Dkt #1).
2. Plaintiff served the United States Attorney's Office and the Attorney General by certified mail on November 1, 2019.
3. The United States' deadline to Answer or otherwise plead was on December 31, 2019.
4. Unfortunately, there was an error and the service on Attorney General was never logged into the United States' calendar. As a result, the United States missed the deadline to Answer or otherwise plead.

5. The United States apologizes to the Court and Plaintiff for the error. The error was inadvertent and not in any way an attempt to obtain an advantage or other strategic purpose.
6. There would appear to be no prejudice to Plaintiff as the case is part of a number of cases arising out of the shooting at the First Baptist Church of Sutherland Springs on November 5, 2017, all of which have been consolidated under case number 5:18-CV-555-XR. On November 5, 2019, this Court issued an Order also consolidating the instant case with cause number 5:18-CV-555-XR. Discovery in the consolidated cases is proceeding.
7. On January 24, 2020, counsel for the United States notified Plaintiff's counsel of its intention to file this Motion, and sought Plaintiff's consent for a pleading to be filed out of time. A draft of this Motion was provided to Plaintiff's counsel on February 7, 2020. The United States wanted to wait until hearing from Plaintiff's counsel to file this motion. However, to date, the United States has not received a response.
8. Counsel for Defendant United States begs the Court's forgiveness and asks that the Court enter an order granting the United States leave to answer or otherwise plead out of time.

Respectfully Submitted

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

JOHN F. BASH
United States Attorney
Western District of Texas

JAMES G. TOUEY, JR.
Director, Torts Branch
Civil Division

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AUSTIN FURMAN
Trial Attorney, Torts Branch
Civil Division

JOCELYN KRIEGER
Trial Attorney, Torts Branch
Civil Division

By: /s/ Paul David Stern
PAUL DAVID STERN
Trial Attorney, Torts Branch
United States Department of Justice
Civil Division

Counsel for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February 2020, I electronically filed the foregoing, United States of America's Motion for Leave to File Out of Time, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

/s/ Paul David Stern
PAUL DAVID STERN
Trial Attorney, Torts Branch
United States Department of Justice
Civil Division

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ORDER

Having considered Defendant's Motion for Leave to File Out of Time an answer or to otherwise plead the Court finds that the Motion should be and is **GRANTED**. The Clerk shall file the attachments to Defendant's Motion to File Out of Time.

Signed this _____ day of February, 2020.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE